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JUL 29 2008

In re Application of :
Bieker et al. : DECISION ON
Application No. 10/521,361 : PETITION
Filed: January 14, 2005 :
Atty Docket No. 01117.0010. :
PCUS00 :

This is a decision on the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT PURSUANT TO 37 CFR 1.181," filed January 18, 2008. Alternatively, applicant petitions for revival of the application under 37 CFR 1.137(b). In addition, applicant requests refund of the issue fee and publication fee paid on November 14, 2007.

The above-identified application became abandoned for failure to pay the Issue Fee and Publication Fee within three months of the mailing date, August 14, 2007, of the Notice of Allowance and Fee(s) Due. This Office action set a three-month nonextendable statutory period for reply. No response considered received, the above-identified application became abandoned. A courtesy Notice of Abandonment was mailed on December 11, 2007.

**DECISION ON
PETITION TO WITHDRAW HOLDING OF ABANDONMENT**

In response, applicant timely filed the instant petition. Applicant states payment of the Issue Fee was timely transmitted to the Office on November 14, 2007. Applicant maintains that the response was sent via facsimile to telephone number 001-571-273-2885 and included a signed Certificate of Transmission as provided for under 37 CFR 1.8. However, applicant acknowledges

that the transmittal identified application No. 10/849,802 and thus, is present in that application.

Consideration of applicant's evidence is unnecessary. A review of the petition and of the record of the misidentified application reveals that the response as applicant maintains it was filed on November 14, 2007 was, in fact, filed on that date but with the wrong application number. Thus, the response (and fees) were associated with the wrong application. Of significance, the response did identify the correct inventor and filing date of the application and otherwise, bore all of the correct identifying information. Accordingly, the error has been corrected. The response (including the issue fee and publication fee) filed November 14, 2007, have been "moved" from the electronic record of the incorrectly identified application to the record of the instant application. The response is considered timely filed, albeit with some incorrect identifying information.

In view thereof, the notice of abandonment mailed December 11, 2007 and the holding of abandonment are hereby WITHDRAWN.

The petition under § 1.181 is GRANTED.

No fee is required on petition under § 1.181.

Since consideration of the petition under 37 CFR 1.137(b) is unnecessary, no fee for such consideration is being charged.

**DECISION ON
REQUEST FOR REFUND**

The request for refund is DENIED.

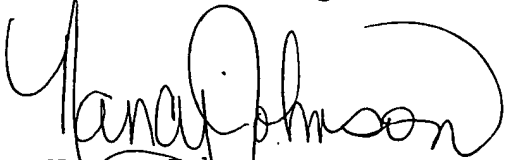
Applicant states no basis for their request for refund of the issue fee and publication fee. The issue fee and publication fee were paid as due. These fees were not paid by mistake. Further, these fees were not paid in excess of that required. Pursuant to 37 CFR 1.26(a), a change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee.

As previously stated the issue fee and publication fee have been moved from the record of the misidentified application to the record of this application.

CONCLUSION

The Office of Data Management (formerly known as the Office of Patent Publication) has been advised of this decision. The application is, thereby, forwarded to the technical staff to withdraw the holding of abandonment and for processing of the application into a patent.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with a large loop at the end of the last name.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions